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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------|
| 10/090,868 | 03/07/2002 | Richard Gunacker | GK-CAS-105 / 500335.20005 | 4782 |
| 26418 | 7590 | 10/07/2004 | EXAMINER | |
| REED SMITH, LLP ATTN: PATENT RECORDS DEPARTMENT 599 LEXINGTON AVENUE, 29TH FLOOR NEW YORK, NY 10022-7650 | | | KIM, CHONG HWA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3682 | |

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/090,868 | Applicant(s) GUNACKER ET AL. | |
| | Examiner Chong H. Kim | Art Unit 3682 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Examiner acknowledges the Applicant's Amendment filed Jul 27, 2004 in response to the Office action made on Mar 12, 2004.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the language "corresponds" in line 5. It is indefinite because it is not clear exactly how the I-shaped plate is related to the minimum distance between the open-edged cutouts.

Claims 11 and 12 recite the language "particularly" in lines 3 and 2, respectively. Such language is indefinite because it leads to confusion over the intended scope of a claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Butcher et al., U.S. Patent 1,979,447.

Butcher et al. shows, in Figs. 1-11, a device for distributing lubricants in grooved rails, comprising;

an elongated plate 28 arranged in the groove of the rail (construed to be a grooved rail since, as broadly interpreted, there are two grooves formed below the rail head; and even if the grooves are not shown in the rail, the groove rails are not positively recited thus no patentable weight would have been given) and having a plurality of cutouts 32 at least along one longitudinal edge;

the cutouts starting at the longitudinal edge and being open-edged, the lubricant being supplied to the cutouts so that the lubricant flow out through the open edges of the cutouts, and wherein the open-edged cutouts of the elongated plate are covered by a cover plate 24 which is constructed so as to be elastic at least in the covering area.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8, 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stokes, U.S. Patent 2,907,410 in view of S.E. Bates et al., U.S. Patent 1,880,672.

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Stokes shows, in Figs. 1-5, a device for distributing lubricants in grooved rails, comprising;

an elongated plate 36 arranged in the groove of the rail (construed to be a grooved rail since, as broadly interpreted, there are two grooves formed below the rail head; and even if the grooves are not shown in the rail, the groove rails are not positively recited thus no patentable weight would have been given) and having a plurality of cutouts at least along one longitudinal edge;

the cutouts starting at the longitudinal edge and being open-edged, the lubricant being supplied to the cutouts so that the lubricant flow out through the open edges of the cutouts, and wherein the open-edged cutouts of the elongated plate are covered by a cover plate 38;

a feed device having a plurality of plates 32, 34, 40 fixed in the groove of the rail one on top of the other as a stack (the word "top" is not construed in a sense of height but in relation to position in space to the source or beginning) ;

wherein the bottom plate 32 of the plates is provided with a first flow divider which is constructed as an elongated cutout in the plate;

wherein a feed opening 30 for the lubricant opens into the first flow divider;

the first flow divider communicates, via at least two openings 44 which are at a distance from one another, with second flow dividers 46 which are arranged in another plate 34 of the stack of the plates; and

wherein the plate having the second flow dividers is followed in the stack by a plate 36 which communicates, via through openings 48, 50, with the second flow dividers and which can

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also be connected to the lubricant delivery openings and which covers the second flow dividers of the plate;

but fails to show the cover plate being elastic and the inlet port having male and female nipples for inlet/outlet connection.

Bates et al. shows, in Figs. 1-9, a device for distributing lubricants in grooved rails comprising an elongated plate 28 arranged in the groove having a cutout at least along one longitudinal edge wherein the open-edged cutout of the elongated plate is covered by a cover plate 24 which is constructed so as to be elastic at least in the covering area.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the inflexible cover of Stokes with the elastic cover as taught by Bates et al. in order to provide a better lubricating device wherein the compression by the flange of the wheel on the cover creates an extra pumping action on the distributor so that noise can be reduced.

As to the matter of the inlet port having male and female nipple for inlet/outlet connection, the Examiner takes Official Notice the fact that such cone shaped nipple fittings as recited in claim 14 is well known in the fluid pipe connection art and such usage would have been within the level of ordinary skill in the art.

Allowable Subject Matter

7. Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 8 and 10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chong H. Kim whose telephone number is (703) 305-0922. The examiner can normally be reached on Tuesday - Friday; 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on (703) 308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

chk
October 1, 2004


CHONG H. KIM
PRIMARY EXAMINER